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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	
Debtors. ¹	:	(Jointly Administered)
-----X	:	

OBJECTION TO NOTICE OF CURE AMOUNT

RD Management LLC, as agent for Fitchburg MFB, LLC and MFB University Mall S
LLC ("RD Management"), by and through its undersigned attorneys, hereby objects to the

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816).

Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Dkt. No. 1774] (the “Supplemental Cure Notice”) relating to (i) that certain unexpired lease (the “Tampa Lease”) between MFB University Mall S LLC, as lessor, and Sears, Roebuck and Co. (“Sears”), as tenant, for the premises currently known as Store Number 1465 located at 2266 University Square Mall, Tampa, FL 33612 (the “Tampa Premises”) and (ii) that certain unexpired lease (the “Fitchburg Lease”) between Fitchburg MFB, LLC, as lessor, and Kmart Corporation (the “Kmart”), as tenant, for the premises currently known as Store Number 4444 located at 140 Whalon Street, Fitchburg, MA 01420. In support thereof, RD Management respectfully states as follows:

OBJECTION

1. On October 15, 2018 (the “Petition Date”), Sears Holdings Corporation, Sears, Kmart and certain of their affiliates (collectively, the “Debtors”) filed their respective voluntary petitions for reorganization pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On December 6, 2018, the Debtors filed and served a *Notice of Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Property in Connection Therewith* [Dkt. No. 1076] (the “Rejection Notice”) seeking authority to, *inter alia*, reject the Tampa Lease and to abandon “commercial and IT equipment, shelving, material handling equipment, and other furniture and fixtures located within the [Tampa Premises].” (See Rejection Notice at p. 5.) However, Sears continues to operate at the Tampa Premises, and the Court has not yet entered an Order approving the Rejection Notice.

3. On January 23, 2019, the Debtors filed the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in*

Connection with Global Sale Transaction [Dkt. No. 1774] (the “Supplemental Cure Notice”), setting forth, *inter alia*, certain executory contracts and non-residential real property leases which may be subject to potential assumption and assignment.

a. The Tampa Lease

4. Notwithstanding the filing of the Rejection Notice, the Debtors may potentially assume and assign the Tampa Lease, now identified as an “executory contract”:

No	Debtor Counterparty(s)	Counterparty Name	Contract Title	Contract Executed Date	Contract Expiration Date	Contract Number	Cure Amount
447	SEARS, ROEBUCK AND CO.	R D Management	Master Lease		03/01/2021	S1465-1-B	\$ 40,833

(See Supplemental Cure Notice, Ex. A-1 at p. 22.)

5. As of the date hereof, Sears is in default under the terms of the Tampa Lease; the amount currently owing consists of unpaid rent (\$40,833.35), common area maintenance (\$5,148.27), insurance (\$4,258.98) and tax (\$4,585.10) expenses, totaling an amount not less than \$54,825.70. Annexed as Exhibit A is an itemization of such amount through the date hereof.

b. The Fitchburg Lease

6. Additionally, the Debtors may potentially assume and assign that certain Fitchburg Lease:

Store Number	Obligor	Counter Party Name	Contract Title	Contract Expiration Date	Contract Number	Cure Amount
4444	KMART Corporation	R D Management	Master Lease	11/30/2021	K4444-1-A	\$ 15,625

(See Supplemental Cure Notice, Ex. B-1 at p. 9.)

7. As of the date hereof, in the addition to the cure amount scheduled by Kmart for unpaid rent, Kmart is responsible for payment of, among other things, quarterly real estate taxes

that have been billed in the amount of \$21,024.44 -- of which Kmart has paid \$4,606.31. The remaining balance of real estate taxes, totaling \$16,418.13, is due to be paid on February 1, 2019.

OBJECTION

8. As a condition to the assumption and assignment of the leases, the Debtors are required to cure existing defaults pursuant to section 365 of the Bankruptcy Code, which provides in relevant part that “[i]f there has been a default in the executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee . . . cures, or provides adequate assurance that the trustee will promptly cure, such default” 11 U.S.C. § 365(b)(1)(A).

9. **Tampa Lease.** As set forth above, the Supplemental Cure Notice understates the Debtors’ cure obligation in relation to the amount actually owed under the Tampa Lease. Thus, RD Management objects to assumption of the Tampa Lease unless and until the cure amount is increased to \$54,825.70.²

10. Further, Sears is responsible for year-end adjustments to items such as common area maintenance, taxes and other expenses that are paid over the course of a year on an estimated basis. Generally the year-end adjustment, or true-up, of these categories does not take place until several months after the close of the RD Management’s fiscal year. Since section 365(b) only requires debtors to cure defaults under their leases, and since there can be no default for failure to pay an amount that has not as yet been billed, unpaid year-end adjustments (and those adjustments that may currently be accruing) are not a part of the cure obligation of the Debtors.

11. Accordingly, RD Management requests that language be inserted into any proposed

² RD Management reserves the right to amend and/or supplement this objection to reflect such additional amounts or to account for any additional adjustments that have not yet been billed or have not yet become due under the Lease through the date of the closing on any assumption and assignment of the Lease.

order governing the assumption and assignment of the Tampa Lease to provide that the proposed assignee shall be responsible for all unpaid year-end adjustments, whether accruing prior to or after the effective date of assumption of the Lease, when such charges become due in accordance with the terms of the Tampa Lease.

12. **Fitchburg Lease**. Any proposed order governing the assumption and assignment of the Fitchburg Lease should provide for payment of any outstanding real estate taxes in addition to unpaid rent. Accordingly, RD Management objects to the assumption and assignment of the Fitchburg Lease unless and until the proposed cure amount is increased to include the \$16,418.13 of real estate taxes that are due on February 1, 2019.

RESERVATION OF RIGHTS

13. RD Management reserves all rights in connection with the Tampa Lease and the Rejection Notice. Further, RD Management reserves the right to amend this objection to (i) account for all further amounts that have not yet been billed or have not yet become due under the terms of the Tampa Lease or Fitchburg Lease, and (ii) further reconcile the proposed cure amounts set forth herein for items such as, but not limited to, claims for rent, taxes, fees and any additional cure amounts due in connection with the Tampa Lease or Fitchburg Lease.

CONCLUSION

WHEREFORE, RD Management respectfully requests that the Court enter an order (i) establishing that the cure amount for Tampa Lease is \$54,825.70; (ii) establishing that any proposed assignee of the Tampa Lease shall be responsible for all unpaid year-end adjustments when such charges become due in accordance with the terms of the Lease; (iii) establishing the cure amount for the Fitchburg Lease include any unpaid real estate taxes due February 1, 2019; and (iv) granting such other and further relief as is just and proper under the circumstances.

Dated: New York, New York
January 31, 2019

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CERTIFICATE OF SERVICE

Michael V. Blumenthal certifies that he caused to be served a true and correct copy of the attached **Objection to Notice of Cure Amount** via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties listed below as indicated.

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